

**REMARKS**

In the Office Action dated October 1, 2004, the Examiner has allowed claims 26 and 27 and has ***finally rejected*** claims 28-40 pending in the present application on the basis of new ground(s) of rejection and newly cited art. By the present amendment, claims 28 and 34 have been amended. Accordingly, claims 26-40 remain in the present application. Applicant respectfully requests reconsideration and allowance of outstanding claims 28-40 and withdrawal of the finality of the rejection of the Office Action dated October 1, 2004.

A good and sufficient reason why the present response is necessary and was not earlier presented is that an entirely new references have been cited in the present final rejection dated October 1, 2004 (37 CFR 1.116(c)). The new references are Irvin (USPN 6,021,317) ("Irvin '317") and Todd (USPN 6,002,672) ("Todd '672") which is for the first time brought to applicant's attention by means of the present ***final rejection*** dated October 1, 2004. The new references, i.e., Irvin '317 and Todd '672, were not cited in the present application prior to the instant final rejection. Since Irvin '317 and Todd '672 are primary references upon which the Examiner has now relied, applicant believes that it would be manifestly unfair for the Patent Office not to consider applicant's arguments which are necessitated due to the newly cited references, Irvin '317 and Todd '672 (37 CFR 1.116(c)), for considering applicant's present amendment and response and withdrawing the finality of the present Office Action.

**A. Allowable Subject Matter**

The Examiner has allowed claims 26 and 27. Applicant appreciates the Examiner's statement of allowance regarding claims 26 and 27.

**B. Claim Rejections – 35 U.S.C. § 103**

Claims 28 – 40 have been rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Irvin '317 in view of Todd '672. Applicant respectfully disagrees; however, to expedite the prosecution of the present application, applicant has amended independent claims 28 and 34, and respectfully submits that amended claims 28-40 are patentably distinguishable over the cited references of record, considered singly or in combination.

With regard to claim 28, Applicant has amended the claim to specify that the transmitter transmits a signal at a frequency  $f_1$ , and that the receiver receives a signal at a frequency  $f_2$ , and that the controller is connected to the transmitter to set the frequency  $f_1$ , and is connected to the receiver to set the frequency  $f_2$ , based on the bit error rate. Support for this amendment is found in the Specification on page 8, lines 8 – 19, and in Figure 1.

Applicant respectfully submits that the amendment to include the limitation that the controller be capable of setting the transmit frequency and receive frequency based on the bit error rate of the received signal distinguishes the claimed invention from the references of record in the application. Specifically, none of the cited references teach or suggest the selection of the transmit or receive frequencies based upon the bit error rate. Accordingly, Applicant asserts that claim 28, as amended, is allowable. Because

claims 29, 30, 31, 32, and 33 depend either directly or indirectly from now allowable claim 28, Applicant asserts that they are likewise allowable for at least the same reasons discussed above with regard to claim 28.

With regard to claim 34, Applicant has amended claim 34 to include a means for setting the first frequency and the second frequency based on the bit error rate. Support for this amendment is also found in the Specification on page 8, lines 8 – 19, and in Figure 1.

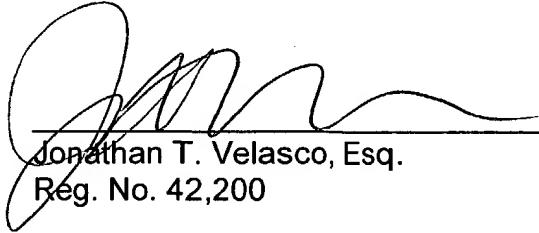
For the same reasons set forth above, Applicant asserts that claim 34, as amended, is allowable. Because claims 35, 36, 37, 38, 39, and 40 depend either directly or indirectly from now allowable claim 34, Applicant asserts that they are likewise allowable.

**C. Conclusion**

For all the foregoing reasons, withdrawal of the finality of the rejection of present Office Action and a notice of allowance directed to claims 26-40 pending in the present application are respectfully requested.

Respectfully Submitted,

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